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Leslie T. Gladstone,

UNITED STATES BANKRUPTCY COURT
Southern District of California

In re

Artes Medical, Inc.,
fdbA Arsis Medical USA, Inc.,
fdbA Artes Medical USA, Inc.,

Debtor.

Case No. 08-12317-LT7

Chapter 7

**CHAPTER 7 TRUSTEE'S MOTION FOR
ORDER UNDER BANKRUPTCY CODE
SECTIONS 105, 363, AND 365, AND
FRBP 6004, 6006 AND 9019, APPROVING:
(1) SALE OF ASSETS FREE AND CLEAR
OF LIENS, CLAIMS AND
ENCUMBRANCES, (2) ASSUMPTION AND
ASSIGNMENT OF EXECUTORY
CONTRACTS AND UNEXPIRED LEASES,
AND (3) SETTLEMENT WITH COWEN
HEALTHCARE ROYALTY PARTNERS,
L.P.; AND MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT
THEREOF**

Date: March 20, 2009
Time: 10:00 a.m.
Dept: 3
Judge: Laura S. Taylor

Leslie T. Gladstone, Chapter 7 Trustee (the "Trustee") of the estate of Artes Medical, Inc.,
fdbA Arsis Medical USA, Inc., fdbA Artes Medical USA, Inc. (the "Debtor"), by and through her
undersigned proposed counsel, hereby moves this Court (the "Motion") for an order: (1) approving
the sale of substantially all of the assets of the Debtor's estate ("Estate") free and clear of liens,
claims and encumbrances to ARTF Acquisition Corporation ("ARTF"), or such other successful

bidder at public auction; (2) approving the assumption and assignment of certain executory contracts and unexpired leases in connection therewith; and (3) approving a settlement with secured creditor Cowan Healthcare Royalty Partners, L.P. ("CHRP") in the event ARTF is the successful bidder at the sale. This Motion is based on the Notice of Motion, the Memorandum of Points and Authorities herein, and the Declaration of Leslie T. Gladstone in support of the Motion (the "Gladstone Declaration") filed concurrently herewith, and upon such further oral and documentary evidence as may be presented at the hearing on the Motion.

I.

GENERAL SUMMARY OF RELIEF SOUGHT

The Trustee, pursuant to sections 105, 363, and 365 of the Bankruptcy Code¹ and Bankruptcy Rules² 6004, 6006 and 9019, moves the Court for entry of an order approving the sale of substantially all of the remaining assets of the Estate free and clear of liens, claims and encumbrances to ARTF or such other Recommended Successful Bidder (as defined below). The Trustee has received an offer (the "Initial Bid") from ARTF to purchase all assets, properties, interests, and rights of the Estate (the "Purchased Assets"), except for the Excluded Assets (as defined below), and to assume certain liabilities related to the Debtor's operations (the "Assumed Liabilities"). The Trustee and ARTF have agreed to the terms of an assets purchase agreement (the "APA"), a copy of which is attached to the Gladstone Declaration as **Exhibit A**,³ which details the Purchased Assets and Assumed Liabilities, as well as the assets to be excluded from the sale and to remain vested in the Estate (the "Excluded Assets"). The APA provides that ARTF will pay a purchase price in the form of: (1) a release of CHRP's claims against the Debtor in an amount exceeding \$29.7 million, (2) the assumption of the Assumed Liabilities, and (3) \$225,000 in cash.

ARTF's Initial Bid is subject to overbid in accordance with the detailed bidding procedures set forth in the Court's Order on Ex Parte Motion Establishing Bidding and Sale Procedures, Docket No. 71 (the "Procedures Order"). As explained in the Procedures Order, the Trustee will hold an

¹ References herein to the "Bankruptcy Code" are to 11 U.S.C. §§ 101, *et seq.*

² References herein to the "Bankruptcy Rule(s)" are to the Federal Rules of Bankruptcy Procedure.

³ The Schedules to the APA are in the process of being completed and will be filed with the Court by March 6, 2009, except for the schedule of Executory Contracts (defined below) to be assumed and assigned to ARTF, which will be presented to the Trustee in accordance with the procedures set forth in the Procedures Order (defined below).

1 auction of the Assets on March 19, 2009 at 10:00 a.m. (the "Auction") at which qualified bidders (as
2 defined in the Procedures Order) may bid on the Debtor's assets. On March 20, 2009, the Court will
3 hold a hearing on this Motion (the "Sale Hearing") at which time the Trustee will request the Court
4 approve the sale to ARTF or such other Qualified Bidder which the Trustee determines, in her
5 business judgment, has presented the best offer and should be recommended to the Court for
6 approval (the "Recommended Successful Bidder").

7 In connection with the proposed sale, the Trustee seeks to assume and assign to the
8 Recommended Successful Bidder certain executory contracts and unexpired leases (the "Executory
9 Contracts") related to the Debtor's business. Those Executory Contracts, along with Trustee's
10 estimate of the cure amounts associated with each, are listed on **Exhibit A** hereto. Pursuant to the
11 Procedures Order, each potential Recommended Successful Bidder is required to identify those
12 Executory Contracts it wishes to assume at or before March 13, 2009 at 12:00 p.m. (California time)
13 (the "Bid Deadline"). The Trustee will present the Court and interested parties with a final list of the
14 Executory Contracts to be assumed by the Recommended Successful Bidder at or before the Sale
15 Hearing. Any cure amounts associated with each assumed Executory Contract will be paid at the
16 closing of the proposed sale.

17 Finally, the Trustee seeks authority from the Court to settle all claims by and between CHRP
18 and the Estate in the event ARTF is the Recommended Successful Bidder. CHRP is the sole
19 stockholder of ARTF. CHRP asserts a secured claim against the Estate in an amount exceeding
20 \$29.7 million, which is comprised of three components: (1) \$21.7 in connection with a February 12,
21 2008 revenue financing; (2) \$8 million on account of a loan to the Debtor on or about February 12,
22 2008; and (3) the amounts paid to the Debtor pursuant to court-approved post-petition financing.
23 The Trustee has analyzed potential claims against CHRP based on, among other things, Chapter 5 of
24 the Bankruptcy Code. As explained in more detail below, the Trustee has determined that the merits
25 of any avoidance claims against CHRP are uncertain. The Trustee anticipates that pursuing such
26 claims would likely give rise to protracted litigation and appeals which would be counter-productive
27 and detrimental to the interests of the Estate. Thus, the Trustee seeks, in connection with the sale to
28

1 ARTF, authority to settle and release all claims by and between CHRP and the Estate pursuant to
2 Bankruptcy Rule 9019.

3 II.

4 JURSDICTION AND VENUE

5 The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue is
6 proper pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C.
7 § 157(b)(2). The statutory predicates for the relief requested herein are Bankruptcy Code sections
8 105, 363, and 365, and Bankruptcy Rules 6004, 6006 and 9019.

9 III.

10 FACTUAL BACKGROUND

11 On December 1, 2008, the Debtor filed a voluntary petition for relief under chapter 7 of the
12 Bankruptcy Code (the "Petition Date"). On January 8, 2009, this Court authorized the Trustee to
13 operate the Debtor's business and to use the cash collateral of secured creditor CHRP.

14 A. Description and History of the Debtor's Business

15 Prior to the Petition Date, the Debtor was a publicly traded, San Diego-based medical
16 technology company focused on developing, manufacturing and commercializing aesthetic
17 injectable products for the dermatology and plastic surgery markets. Debtor's flagship technology,
18 called ArteFill®,⁴ is an injectable dermal filler for correcting facial wrinkles and lines. The filler is
19 non-resorbable and therefore lasts for quite a long time, perhaps up to five years or more. The other
20 collagen filler products in the market are more or less temporary, and new injections are required
21 quite often. ArteFill is approved by the United States Food and Drug Administration ("FDA").
22 Accordingly, two of the Debtor's primary assets are the FDA licenses that allow Artes to produce
23 ArteFill.

24 Constant, continuous activity is required to maintain the business in an FDA-compliant
25 manner. The finished product must be refrigerated and some of the manufacturing inventory must
26 remain frozen. Much of the manufacturing must be done in clean rooms at various levels of sterility;
27 the rooms must remain clean even though there is no present manufacturing. All of this requires

28 ⁴ ArteFill® is a registered trademark, but further references to it will omit the "®".

1 personnel on site to check temperatures, ensure that the clean rooms have positive air pressure (so
2 that if there is a breach, air leaks out of the clean room, and not in), and generally keep operations in
3 good order.

4 The Trustee has determined that the Debtor's assets should be sold, essentially as a going
5 concern, by a public auction process whereby the Court would approve a sale by not later than
6 March 20, 2009. The Trustee believes that a delay in a sale after that date is likely to result in a
7 substantial decline in the value of the Debtor's assets due to a number of factors including: (a) the
8 absence of Debtor's products from the stream of commerce; (b) loss of personnel necessary to the
9 ongoing business; (c) loss of perishable inventory due to passage of time; (d) the public turning to
10 other products; (e) the cost of maintaining the assets before a sale can occur; and (f) potential
11 disruption with regard to regulatory compliance and existing regulatory licenses.

12 **A.B. CHRP's Pre-Petition Claims and Post-Petition Loan**

13 On February 12, 2008, the Debtor and CHRP consummated a transaction in which, among
14 other things, CHRP paid the Debtor \$21.5 million in the following two components: (A) \$15 million
15 in exchange for the right to receive (i) a specified percentage of the Debtor's net product sales of
16 ArteFill and certain other products related to ArteFill within the United States through December 31,
17 2017, and (ii) an aggregate of \$15 million in certain future lump sum payments from the Debtor
18 (collectively, the "Revenue Purchase"), and (B) \$6.5 million as a senior term loan (the "Secured
19 Note"; together with the Revenue Purchase, the "Secured Obligations").

20 Under the Revenue Purchase, CHRP purchased a percentage of the Debtor's incoming
21 revenue for a set period of time and certain lump sum payments in return for its cash payment to the
22 Debtor. All revenue payments from the Debtor's customers are made to a joint concentration
23 account from which the bank pays the purchased percentage to CHRP and the remainder of the
24 payment goes to the Debtor. In connection with the Revenue Purchase, the Debtor signed a security
25 agreement granting a security interest in most of its assets to CHRP to secure the Debtor's
26 obligations under the Revenue Purchase.⁵ The Revenue Agreement also provides for a "put option"
27 whereby on occurrence of certain specified events, CHRP could "put" the revenue stream and lump
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⁵ The Secured Note is also secured by all of the Debtor's assets.

1 sum payments back to the Debtor for (i) the original purchase price, plus (ii) the greater of CHRP's
 2 internal rate of return and an amount equal to fifty percent (50%) of the original purchase price, in
 3 each case less amounts already received from the Debtor on account of the Revenue Purchase (the
 4 "Floored IRR").

5 Prior to the Petition Date, CHRP gave the Debtor notice that it was exercising the put option.
 6 CHRP now asserts it has a perfected, secured claim in the amount of the put price (\$15 million + the
 7 Floored IRR). CHRP is also owed approximately \$8 million under the Secured Note based on the
 8 \$6.5 million principal balance, interest and the assessment of a prepayment penalty.

9 In addition to the pre-petition funding from CHRP, after her appointment the Trustee
 10 determined that the Debtor did not have sufficient funds to keep operating through the date of any
 11 potential sale of its assets. In order to preserve the value of the Debtor's assets as a going concern,
 12 the Trustee sought and the Court approved a senior post-petition loan from CHRP in the amount of
 13 up to \$2.0 million (the "Postpetition Financing").⁶ See Docket No. 63. Pursuant to the terms of the
 14 Postpetition Financing, CHRP has a post-petition secured administrative claim in the amount of
 15 actual monies funded.

16 **A.C. The Proposed Sale**

17 **1. The Assets**

18 Through the proposed sale,⁷ the Trustee seeks authority to sell to ARTF substantially all of
 19 the assets, properties, interests and rights of the Debtor, free and clear of all liens, claims and
 20 encumbrances, including, but not limited to, those assets listed in Section 2.1(a)-(q) of the APA.
 21 These assets include, but are not limited to:

22 (i) the business of the Debtor as a going concern (the "Business") and all goodwill
 23 associated therewith;

24
 25
 26 ⁶ Under the terms of the Postpetition Financing, CHRP agreed to provide the Debtor with up to \$1.0 million of initial
 funding, with another \$1.0 available only upon subsequent agreement of CHRP.

27 ⁷ The following is a summary of the proposed sale to ARTF and in no way modifies or supplants the terms of the APA
 or the parties' agreement with respect to the sale. Capitalized terms not defined in this subsection shall have the meaning
 28 ascribed to them in the APA. To the extent any conflict exists between the language in this summary and terms of the
 APA, the APA shall govern.

- 1 (ii) the Debtor's interest in and to the executory contracts and unexpired leases
- 2 designated on Schedule 2.1(b) of the APA;
- 3 (iii) the Debtor's Regulatory Approvals and any Regulatory Approval Applications;
- 4 (iv) all Intellectual Property, Products, Equipment, and Inventory;
- 5 (v) all books, records and other documentation of the Debtor that relates to the Purchased
- 6 Assets;
- 7 (vi) all rights, privileges, claims, counterclaims, demands, causes of action, and options of
- 8 the Company to the extent relating or pertaining to the Purchased Assets or the Business arising out
- 9 of events occurring on or prior to the Closing, excluding avoidance Claims of the Company arising
- 10 under Chapter 5 of the Bankruptcy Code, and commercial tort claims other than the Lemperle
- 11 Option (defined below);
- 12 (vii) the right, but not the obligation, to obtain the Lemperle Claim⁸ from the Trustee for
- 13 no additional consideration (the "Lemperle Option") if either (i) within three (3) months after the
- 14 closing of the sale, the Trustee has not delivered written notice to ARTF of her intent to pursue the
- 15 Lemperle Claim, or (ii) at any time after delivering any such written notice, the Trustee ceases to
- 16 pursue the Lemperle Claim prior to obtaining a final non-appealable judgment, settlement or
- 17 otherwise;
- 18 (viii) all other or additional privileges, rights, interests, properties and assets of every kind
- 19 and description and wherever located that are used in connection with the Business or the Purchased
- 20 Assets, other than the Excluded Assets;
- 21 (ix) all rights under warranties, representations and guarantees made by third parties
- 22 relating to any Purchased Assets or Assumed Liabilities;
- 23 (x) all cash and cash equivalents held in the name of the Debtor, or by the Trustee on
- 24 account of the Debtor, other than the Excluded Cash;

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27 ⁸ The APA defines the Lemperle Claim as "the case filed in the Superior Court of California, County of San Diego on

28 August 29, 2008 as Case No 37-2008-00090739-CU-BC-CTL, as amended by the first amended complaint on October 23, 2008, captioned Artes Medical, Inc., a Delaware corporation, plaintiff, v. Stefan M. Lemperle, Gottfried H. Lemperle, H. Michael Shack, Charles A. Schliebs, Terry Knapp, Robert Binkele, Barry Vogel, Eric Donsky, Johan Brahme, William Kachioff, Barry Rubin, and Does 1-50, inclusive, defendants."

(xi) all accounts receivable of the Company and notes receivable, together with all unpaid accrued interest thereon and all rights of collection with respect thereto;

(xii) any intercompany accounts receivables owed to the Debtor by any of the Debtor's subsidiaries;

(xiii) any and all instruments, prepaid assets and deposits, letters of credit proceeds, unbilled costs and fees, tax refunds and accounts relating to any Purchased Assets;

(xiv) all of the capital stock and/or equity securities of the Debtor's subsidiaries; and

(xv) all permits and business licenses related to the Purchased Assets or the Manufacturing Facility Lease.

Section 2.2 of the APA specifically excludes from the Purchased Assets and Assumed Liabilities (1) any avoidance claims the Estate may have under Chapter 5 of the Bankruptcy Code, (2) the unexpired lease for the Debtor's expansion facility at 5880 Pacific Center Boulevard in San Diego, (3) any commercial tort claims (other than the Lemperle Option); (4) all unused retainers paid to lawyers and accountants retained by the Debtor; and (5) any other assets listed on Schedule 2.2(h) to the APA. Also excluded from the Purchased Assets are the Cash Amount (defined below) and any cash the Trustee is permitted to use and actually uses pursuant to the Cash Collateral Agreements and pursuant to the Postpetition Financing from CHRP approved by the Court on February 11, 2009.

2. Assumption of Executory Contracts

Section 7.3 of the APA provides that ARTF, as the purchaser, will be exclusively responsible for the cure of all monetary defaults with respect to the Executory Contracts to be assumed and assigned in connection with the sale pursuant to Section 365 of the Bankruptcy Code. The Trustee reserves the right to remove Executory Contracts that the successful bidder does not wish to retain and subsequently assume or reject such removed Executory Contracts.

3. The Assumed Liabilities

Section 2.3 of the APA provides that ARTF will assume, as of the effective closing of the sale, (i) all liabilities of the Debtor arising on or after such closing date under the Executory Contracts assumed and assigned to ARTF (the "Assumed Contracts"); (ii) all liabilities necessary to

1 assume and assign the Assumed Contracts pursuant to Section 365 of the Bankruptcy Code; and (iii)
 2 any sales or transfer taxes applicable to the transfer of assets under the sale.

3 4. The Consideration

4 In return for the Assets, ARTF will submit a credit bid in the amount of \$22.65 million with
 5 respect to its outstanding claims under the Secured Obligations and the Postpetition Financing. In
 6 addition, ARTF will pay the Trustee cash in the amount of \$225,000 (the "Cash Amount"). Further,
 7 CHRP will agree to increase the Carve-Out under the Cash Collateral Agreement to \$250,000.

8 5. Mutual Releases

9 Sections 4.2(b) and 4.3(c) of the APA provides that upon consummation of the sale to ARTF,
 10 the Trustee and CHRP will execute mutual releases of any and all claims, rights or causes of action
 11 each may have against the other, including, but not limited to, any claims CHRP may have under the
 12 Secured Obligations and Postpetition Financing.

13 6. The Sale Process

14 As stated above, on February 20, 2009, the Court entered the Procedures Order, which details
 15 the procedure for interested parties to submit bids for purchase of the Assets. The following is a
 16 summary of the several relevant provisions of that Order:⁹

- 17 • Qualified Bidders may submit Qualified Bids on or before the Bid Deadline;
- 18 • Qualified Bids must be for cash and in an amount at least \$100,000 higher than the
 19 highest and best Qualified Bid received prior to the Auction (the "Starting Bid"), and
 20 each subsequent bid must be at least \$100,000 higher than the previous bid amount;
- 21 • Qualified Bidders must make a deposit of cash equal to at least 10% of the total value
 22 of such bidders Qualified Bid;
- 23 • Qualified Bidders must complete all due diligence prior to the Bid Deadline;
- 24 • The Auction will be held at 10:00 a.m. on March 19, 2009 at the offices of the
 25 Trustee's undersigned proposed counsel;

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 27 ⁹ The following is a summary of the bidding and auction procedures set forth in the Procedure Order and approved by
 28 the Court and in no way alters such procedures. To the extent any summary of those procedures conflicts with the actual
 terms of the Procedures Order, the latter shall govern. Capitalized terms not defined in this section shall have the
 meaning ascribed to them in the Procedures Order. Interested parties should read the Procedures Order carefully to
 ensure any bids are submitted in compliance with the court-approved procedures.

- The Trustee will evaluate all Qualified Bids and determine which bid, if any, should be submitted to the Court for approval as the Recommended Successful Bid;
- The Assets are to be sold “AS IS, WHERE IS” and without any representations or warranties of any kind, nature or description by the Trustee or her agents or representatives;
- Any party to an Executory Contract listed on Exhibit A hereto shall file with the Court and serve on the Trustee’s undersigned proposed counsel any opposition to assumption and assignment of such Executory Contract not later than the Bid Deadline, together with the grounds for any such opposition and/or any alternative cure amount;
- On or before the Bid Deadline, ARTF and any other Qualified Bidder must submit to the Trustee a list of the Executory Contracts that it would like the Trustee to assume and assign as part of any sale;
- Any objections to the assignment of any Executory Contract to a particular Qualified Bidder must be filed with the Court and served on the Trustee’s undersigned proposed counsel by March 18, 2009 at 5:00 p.m. (California time), and must state in detail the grounds for such objection.
- The Trustee reserves the right to identify any Executory Contract that will not be assumed by the Trustee at any time prior to the conclusion of the Sale Hearing.

IV.

ARGUMENT

A. An Articulated Business Justification Exists For The Proposed Sale

Section 363(b) of the Bankruptcy Code provides that a trustee, “after notice and a hearing, may, use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). The standard for approval of a sale of property of the estate under section 363(b) is whether there exists “some articulated business justification” for the proposed transaction. *Walter v. Sunwest Bank (In re Walter)*, 83 B.R. 14, 19 (9th Cir. BAP 1988) (quoting *Institutional*

1 *Creditors of Cont'l Air Lines, Inc. v. Cont'l Air Lines, Inc. (In re Cont'l Air Lines, Inc.)*, 780 F.2d
2 1223, 1226 (5th Cir. 1986)).

3 Ample business justification exists for the proposed sale here. The Debtor commenced this
4 chapter 7 case because it was clear no reorganization would be feasible. It appears CHRP is fully
5 secured in all of the Debtor's assets and the debt to CHRP likely exceeds the value of the Debtor's
6 assets. The Trustee believes that a sale of the Debtor's business as a going concern is the method
7 most likely to maximize the value of Estate assets. In fact, the Trustee believes the sale process
8 proposed is the only opportunity the Estate may have to derive any value from Estate assets above
9 and beyond CHRP's secured claim.

10 Under the proposed sale, the Trustee will transfer substantially all of the assets of the Estate
11 to ARTF, except for the Excluded Assets, and ARTF will assume certain liabilities of the Debtor.
12 CHRP credit bids \$22,650,000 with respect to the Secured Obligations,¹⁰ with another \$225,000 to
13 be paid in Cash. The sale will unburden the Estate of the liabilities and continuing operating losses
14 associated with the Debtor's business, while providing the Estate with some cash to fund further
15 administration, including pursuit of avoidance actions, and to potentially pay claims of unsecured
16 creditors, including priority employee claims.

17 The Trustee and CHRP will also execute mutual release of any and all claims and causes of
18 action each may have against each other. As a result, the Estate will be relieved of CHRP's
19 enormous secured claim. The Trustee will then be free to use the Cash Amount and any remaining
20 cash collateral for the benefit of the Estate's other creditors. In addition, the Trustee may pursue
21 avoidance claims under Chapter 5 of the Bankruptcy Code and commercial tort claims for the
22 benefit of creditors other than CHRP. Given the size of CHRP's secured claim, the proposed sale to
23 ARTF represents the only sure method of realizing any value for the Estate's other creditors.

24 In light of the foregoing, the Trustee believes the proposed sale to ARTF is in the best
25 interests of the Estate.

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27
28 ¹⁰ CHRP reserves the right to raise its credit bid in the event competing Qualified Bids are presented to the Trustee.

A.B. The Assets Should be Sold Free and Clear

Section 363(f) of the Bankruptcy Code provides that a trustee, “may sell property under subsection (b)...free and clear of any interest in such property of an entity other than the estate, only if: (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest; (2) such entity consents; (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property; (4) such interest is in bona fide dispute; or (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.” 11 U.S.C. 363(f). Here, the only entity with an “interest” in the property to be sold to ARFT under the proposed sale is CHRP, the only party asserting a secured claim against the Debtor. CHRP has consented to the sale and has agreed to release any interest in any other estate assets upon the closing of the sale. As such, the Trustee should be allowed to sell the Purchased Assets free and clear under Bankruptcy Code section 363(f).

C. Assumption and Assignment of the Assigned Contracts is Appropriate Under the Circumstances

By this Motion, the Trustee also seeks authority to assume and assign to ARTF (to the extent identified by ARTF prior to the end of the Sale Hearing) the Executory Contracts identified on Exhibit A hereto, which will enhance the value of the sale to the Estate by curtailing further administrative liability to the Estate and eliminating substantial rejection damages claims. Assignment of the Debtor’s rights under the Executory Contracts is essential to ARTF operating the Debtor’s Business on a going forward basis and maximizing both parties’ value from the sale. Accordingly, the Trustee requests approval under section 365 of the Bankruptcy Code, notwithstanding any provisions in the Executory Contracts, including those described in sections 365(b)(2) and (f)(1)-(3) of the Bankruptcy Code, that prohibit such assignment.

Section 365(f) of the Bankruptcy Code provides, in pertinent part, that: “The trustee may assign an executory contract or unexpired lease of the debtor only if (A) the trustee assumes such contract or lease in accordance with the provisions of this section; and (B) adequate assurance of future performance by the assignee of such contract or lease is provided, whether or not there has been a default in such contract or lease.” 11 U.S.C. § 365(f)(2). Under section 365(a), a trustee

1 “subject to the court’s approval, may assume or reject any executory contract or unexpired lease of
 2 the debtor.” 11 U.S.C. § 365(a). Section 365(b)(1), in turn, codifies the requirements for assuming
 3 an unexpired lease or executory contract of a debtor, providing that:

4 (b)(1) If there has been a default in an executory contract or unexpired lease of
 5 the debtor, the trustee may not assume such contract or lease unless, at the time of
 assumption of such contract or lease, the trustee –

6 (A) cures, or provides adequate assurance that the trustee will promptly
 cure, such default;

7 (B) compensates, or provides adequate assurance that the trustee will
 8 promptly compensate, a party other than the debtor to such contract or
 lease, for any actual pecuniary loss to such party resulting from such
 9 default; and

10 (C) provides adequate assurance of future performance under such
 contract or lease.

11 11 U.S.C. § 365. Although section 365 of the Bankruptcy Code does not set forth standards for
 12 courts to apply in determining whether to approve a trustee’s decision to assume an executory
 13 contract, courts have consistently applied a “business judgment” test when reviewing such a
 14 decision. *See, e.g., Group of Institutional Investors v. Chicago, Milwaukee, St. Paul & Pacific*
 15 *Railroad Co.*, 318 U.S. 523, 550 (1953); *Matter of Talco, Inc.*, 558 F.2d 1369, 1173 (10th Cir.
 16 1977); *In re Turbowind, Inc.*, 42 B.R. 579, 584 (Bankr. S.D. Cal. 1984). A trustee satisfies the
 17 “business judgment” test when it determines, in good faith, that assumption of an executory contract
 18 will benefit the estate and the unsecured creditors. *In re FCX, Inc.*, 60 B.R. 405, 411 (Bankr. E.D.
 19 N.Y. 1986). The assumption and assignment of the Executory Contracts (to the extent determined
 20 by ARTF) is a necessary part of the agreement with ARTF and, as stated above, will benefit the
 21 estate.

22 The meaning of “adequate assurance of future performance” for the purpose of the
 23 assumption of executory contracts and unexpired leases pursuant to section 365 of the Bankruptcy
 24 Code depends on the facts and circumstances of each case, but should be given “practical, pragmatic
 25 construction.” *See Carlisle Homes, Inc. v. Arrari (In re Carlisle Homes, Inc.)*, 103 B.R. 524, 538
 26 (Bankr. D.N.J. 1989); *see also In re Natco Indus., Inc.*, 54 B.R. 436, 440 (Bankr. S.D.N.Y. 1985)
 27 (adequate assurance of future performance does not mean an absolute assurance that debtor will
 28

1 thrive and pay rent); *In re Bon Ton Rest. & Pastry Shop, Inc.*, 53 B.R. 789, 803 (Bankr. N.D. Ill.
2 1985).

3 Under the terms of the proposed sale, ARTF will be required to cure all monetary defaults
4 under those Executory Contracts it elects to have the Trustee assume and assign pursuant to Section
5 365 of the Bankruptcy Code. Under the Procedures Order, counterparties to Executory Contracts
6 may object to assumption and assignment of their Executory Contract if they believe there is a
7 concern that they have not been provided adequate assurance of future performance. Accordingly,
8 assumption and assignment of the Executory Contracts as part of the sale to ARTF is appropriate
9 under the circumstances.

10 **D. ARTF Constitutes a Good Faith Purchaser Pursuant to Section 363(m) of the**
11 **Bankruptcy Code**

12 Section 363(m) of the Bankruptcy Code provides that “[t]he reversal or modification on
13 appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property
14 does not affect the validity of a sale or lease under such authorization to an entity that purchased or
15 leased such property in good faith...” 11 U.S.C. § 363(m). “Under 11 U.S.C. § 363(m), an appeal
16 of a bankruptcy court’s ruling on a [sale] generally cannot affect the rights of a good faith purchaser
17 of the foreclosed property, unless the debtor [or other complaining party] stays the...sale pending an
18 appeal.” *Mann v. Alexander Dawson Inc. (In re Mann)*, 907 F.2d 923, 926 (9th Cir. 1990).

19 “[T]he primary goal of the mootness rule [embodied in section 363(m)] ‘is to protect the
20 interest of a good faith purchaser . . . of the property,’ thereby assuring finality of sales.” *Onouli-*
21 *Kona Land Co. v. Estate of Richards (In re Onouli-Kona Land Co.)*, 846 F.2d 1170, 1172 (9th Cir.
22 1988) (quoting *Community Thrift & Loan v. Suchy (In re Suchy)*, 786 F.2d 900, 901-02 (9th Cir.
23 1985)(“*Suchy*”). That goal is important in this case because ARTF needs assurance that its
24 purchase of the Purchased Assets will not be subject to future attack by objecting parties.

25 As set forth in the Gladstone Declaration, the protection of section 363(m) is appropriate in
26 this case because the proposed sales transaction is the product of extensive arms-length, good-faith
27 negotiations implemented between the Trustee, ARTF and CHRP. See *Onouli-Kona Land Co.*, 846
28 F.2d at 1173 (lack of good faith within meaning of section 363(m) requires “fraud, collusion, . . . or

1 an attempt to take grossly unfair advantage of other bidders”) (quoting *Suchy*, 786 F.2d at 902)). As
2 a consequence, the requested finding that ARTF is a “good faith” purchaser within the meaning of
3 section 363(m) is appropriate under the circumstances.

4 **E. The Court Should Approve the Settlement of CHRP’s Claims**

5 Bankruptcy Rule 9019(a) provides that “[o]n motion by the trustee and after notice and a
6 hearing, the court may approve a compromise or settlement.” FRBP 9019(a). Before approving a
7 settlement under Bankruptcy Rule 9019(a), the court must determine that it is fair, reasonable, and
8 adequate. The reasonableness of a proposed settlement is determined by the particular
9 circumstances of each case, and “because the bankruptcy judge is uniquely situated to consider the
10 equities and reasonableness of a particular compromise, approval of a compromise will not be
11 disturbed on appeal absent a clear abuse of discretion.” *In re Walsh Construction, Inc.*, 669 F.2d
12 1325, 1329 (9th Cir. 1982).

13 In determining the fairness, reasonableness, and adequacy of a proposed settlement
14 agreement, the court must consider, among other things: (a) the probability of success in the
15 litigation; (b) the expense, inconvenience and delay necessarily attending it; and (c) the paramount
16 interest of creditors and a proper deference to their reasonable views in the premises. *In re A&C*
17 *Properties*, 784 F.2d 1377, 1381 (9th Cir. 1986), *cert. denied* 479 U.S. 854 (1986); *see also*,
18 *Protective Committee or Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S.
19 414 (1968); *In re Justice Oaks II Ltd.*, 898 F.2d 1544, 1549 (11th Cir. 1990); *In re Flight*
20 *Transportation Corp. Sec. Litigation*, 730 F.2d 1128, 1135 (8th Cir. 1984). As long as the
21 bankruptcy court amply considers these factors, its decision must be affirmed. *In re A&C*
22 *Properties, supra*, 784 F.2d at 1381.

23 In the event ARTF is the Recommended Successful Bidder, the Trustee and CHRP intend to
24 execute mutual general releases of any and all claims each may have against the other. As stated
25 above, CHRP asserts a secured claim against the Estate in an amount exceeding \$29.7 million, which
26 is comprised of the Secured Obligations and the Postpetition Financing. The Trustee has analyzed
27 potential claims against CHRP based on, among other things, the Trustee’s avoidance powers under
28 Chapter 5 of the Bankruptcy Code.

1 While the Trustee has raised certain issues in connection with the avoidability of a portion of
2 CHRP's secured claim, it is unclear whether the Trustee would prevail in any avoidance litigation
3 against CHRP. The Trustee is unaware of any precedent similar to the Secured Obligations in the
4 context of avoidance actions. The value of the Estate's assets would also likely be disputed.
5 Moreover, it is likely that any avoidance claims would be aggressively defended by CHRP and any
6 decision on the merits in favor of the Trustee would be appealed. In the event that CHRP's secured
7 claim was challenged, ARTF would likely withdraw its offer to purchase the Debtor's assets. The
8 Estate does not have sufficient funds to finance protracted avoidance litigation at this time, much
9 less appeals, and even if the Estate were successful, CHRP would still have a sizeable secured claim.
10 Thus, the Trustee believes that settlement of CHRP's claims in connection with the sale is in the best
11 interest of the estate.

12 The proposed settlement will allow the Estate to retain the Cash Amount of \$225,000. In
13 addition, CHRP would agree to increase the carve-out under the cash collateral budget by another
14 \$50,000 (up to an aggregate of \$250,000). In exchange, CHRP will release all claims it may have
15 against the Debtor and its Estate, except as expressly provided for under the APA. Thus, the
16 settlement will provide the Estate with a cash reserve which can be used to fund any avoidance
17 actions the Estate may have against parties other than CHRP for the benefit of the Estate's other
18 creditors. In light of the foregoing, the Trustee submits the proposed settlement with CHRP, in
19 connection with the sale to ARTF, is in the best interest of creditors and should be approved
20 pursuant to Bankruptcy Rule 9019.

21 V.

22 CONCLUSION

23 For all the foregoing reasons, the proposed sale transaction with ARTF, including the
24 settlement of CHRP's claims in connection therewith, is in the best interests of the Debtor and its
25 Estate and should be approved.

26 WHEREFORE, the Debtor respectfully requests that, pursuant to sections 105, 363, and 365
27 of the Bankruptcy Code and Bankruptcy Rules 6004 and 9019, the Court (i) authorize the Trustee to,
28 in the absence of any other Recommended Successful Bidder, consummate the sale with ARTF and

1 otherwise approve the terms of the APA, (ii) authorize the assumption and assignment to ARTF of
2 the Executory Contracts identified by ARTF in accordance with the Procedures Order; (iii) find
3 ARTF is a good faith purchaser within the meaning of section 363(m) of the Bankruptcy Code; and
4 (iv) approve the settlement of CHRP's claims against the Debtor pursuant to Bankruptcy Rule 9019.
5

6 Dated: February 24, 2009

/s/ Jeffry A. Davis

Jeffry A. Davis

Joseph R. Dunn

MINTZ LEVIN COHN FERRIS GLOVSKY AND POPEO P.C.

Proposed Attorneys for Trustee

Leslie T. Gladstone

PROOF OF SERVICE

I am employed in the County of San Diego, State of California, over the age of eighteen years, and not a party to the within action. My business address is 3580 Carmel Mountain Road, Suite 300, San Diego, California 92130. On February 24, 2009, I served the within document:

CHAPTER 7 TRUSTEE'S MOTION FOR ORDER UNDER BANKRUPTCY CODE SECTIONS 105, 363, AND 365, AND FRBP 6004, 6006 AND 9019, APPROVING: (1) SALE OF ASSETS FREE AND CLEAR OF LIENS, CLAIMS AND ENCUMBRANCES, (2) ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES, AND (3) SETTLEMENT WITH COWEN HEALTHCARE ROYALTY PARTNERS, L.P.; AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

X **FIRST-CLASS MAIL:** By placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Diego, California, addressed as set forth below.

ELECTRONIC MAIL: By sending such document by electronic mail on February 24, 2009. To the best of my knowledge, the transmission was reported as complete and no error was reported that the electronic transmission was not completed.

See Attached Service List

I am employed in the office of Mintz Levin Cohn Ferris Glovsky and Popeo, P.C.; Jeffry A. Davis and Joseph R. Dunn are members of the bar of this Court.

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 24, 2009, at San Diego, California.

/s/ Diane Johnson
Diane Johnson

In re Artes Medical, Inc.
USBC Case No. 08-12317-LT7
SERVICE LIST

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Request for Special Notice

American Express Travel Related Services
Company, Inc.
c/o Becket and Lee LLP
POB 3001
Malvern, PA 19355-0701

Request for Special Notice

Anika Therapeutics, Inc.
c/o Daniel M. Glosband, Esq.
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Mack LLP

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Ricoh Business Systems
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Ricoh Business Systems
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Wayne, PA 19087

In re Artes Medical, Inc.

USBC Case No. 08-12317-LT7

**ACTIVE CONTRACTS SERVICE
LIST**

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Irvine, CA 92620

Advanced Research Associates
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Mountain View, CA 94043

American Society of Plastic Surgeons
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7794 Grow Drive
Pensacola, FL 32514-7072

BioForm Medical
1875 S. Grant St. #110
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BioMed Realty Trust, Inc.
17140 Bernardo Center Dr. Suite 222
San Diego, CA 92128-2088

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Coast-to-Coast Recruiters
2711 Cornell Cove
Lago Vista, TX 78645-7238

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3 10065 E Harward Ave. #800
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Empire Asset Management Company
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5
6 Fallbrook Engineering
7 355 W. Grand Ave., #4
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Hach Ultra Analytical
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9
10 I-Village
11 500 Seventh Ave., 14th Floor
12 New York, NH 10018-4502

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22 Gottfried Lemperle, M.D.
23 302 Prospect Street
24 La Jolla, CA 92037

Stefan Lemperle
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La Jolla, CA 92037

25
26 Lifecyte, Inc.
27 20 South Dudley, Suite 900
28 Memphis, TN 38103

Manning, Selvage & Lee, Inc.
13273 Collections Center Drive
Chicago, IL 60693

1 Merit Medical Systems, Inc.
2 Attn: Matt Lyons
3 1600 West Merit Parkway
4 South Jordan, UT 84095-2416

Nilson Corporate Solutions
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Marina del Rey, CA 90292-5442

6 Pacific Rim Mechanical
7 7655 Convoy Court
8 San Diego, CA 92111

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10 Preston Gates
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12 Washington, DC 20006-5221

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Commerce, CA 90040

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RPM Material Handling Co.
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10 Don Thrasher
11 P.O. Box 1235
12 Los Angeles, CA 90078

Veolia Environmental Services
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Vista, CA 92084

13
14 William von Brendel
15 1768 Kings Road
16 Vista, CA 92084

Comerica
Two Embarcadero Center Suite 300
San Francisco, CA 94111

EXHIBIT A

Active Contracts

Company Name	Contract Title	Description	Effective Date	Cure Amount
Adelbert Stagg Ph.D.	Termination Agreement		2/29/2008	\$0
Advanced Research Associates	Master Service Agreement	Provide pre-clinical and clinical research services	8/5/2008	\$0
Advanced Research Associates	Project Specification Agreement	Assist in its management of the skin-test study, provide comprehensive data management and reporting services to support the clinical study	8/5/2008	\$0
American Society of Plastic Surgeons ("ASPS")	Partners in Quality Program Agreement	Provide two year unrestricted grant of \$50,000 per year from Jan 1, 2008 to December 31, 2009	Agmt dated 08/01/2007 becomes effective 01/01/2008	\$50,000
BioForm Medical	Second License Agreement	Second License Agreement for Royalty Buyout from BioForm	9/21/2007	\$0
BioForm Medical	Settlement and License Agreement	License	10/1/2005	\$0
BioMed Realty Trust, Inc.	First Amendment to Amended and Restated Building Lease Agreement	Building 5870 Amendment to BioMed Realty Amended and Restated Lease Agreement dated August 21, 2007	10/7/2008	\$0
BioMed Realty Trust, Inc.	First Amendment to Building Lease Agreement	Building 5880 Amendment to BioMed Realty Building Lease Agreement dated August 21, 2007	10/7/2008	\$0

BioMed Realty Trust, Inc.	Amended and Restated Building Lease Agreement	Building 5870	8/21/2007	\$0
BioMed Realty Trust, Inc.	Building Lease Agreement	Building 5880	8/21/2007	\$0
Clinical Reference Laboratory	Master Laboratory Services Agreement	Agreement for laboratory analysis and study management for clinical studies	6/6/2008	\$0
Coast-to-Coast Recruiters	Recruiting Services Agreement	Provide recruiting services for marketing and sales positions	8/5/2008	\$0
Comerica	Pledge and Security Agreement	Corporate Card service agreement	2/27/2007	
Cor-o-van	Document Destruction Service Agreement	Agreement to provide document destruction services	2/18/2005	\$0
Cor-o-van	Agreement for Services	Agreement to provide offsite storage of electronic media weekly	2/23/2005	\$0
Cyberscience Corporation	End User License Agreement	Use of License software for CQ DM QAD DD CQ-W and CQ RT-w	4/9/2007	\$0
Empire Asset Management Company	Letter Agreement	Non-Exclusive Financial advisory	4/17/2008	\$0
Empire Asset Management Company	Letter Agreement	Financial Advisor and exclusive placement agent	9/12/2008	\$0

Fallbrook Engineering	Consulting Agreement	Provide engineering support	9/9/2008	\$0
Hach Ultra Analytical	Service Contract Quote	Agreement for Services and products	3/30/2006	\$0
Hach Ultra Analytical	Calibration/Services Agreement	Agreement for Services and products	3/1/2008	\$0
I-Village	I-Village Services Agreement	Artefill campaign	9/19/2007	\$0
JMP Securities	Engagement Letter	Exclusive Financial Advisor for Strategic Alliances or Sale transaction		\$0
John H. Joseph MD	Agreement for Grant in Support of Investigator Initiated Research Building Lease Agreement (Amendment)	Conduct investigator initiated clinical study entitled: A Single Center Open-Label Study to Evaluate the Cutaneous Restorative Effects of Artefill in the Treatment of Primary and/or Secondary Nasal Defects Protocol:	10/19/2007	\$0
Kampf Marianne	Building Lease Agreement (Amendment)	Building Lease - Mediplant Germany	11/11/2005	\$0
Kampf Marianne	Building Lease Agreement	Building Lease - Mediplant Germany		\$0

KEMA	Quotation for CE/ Quality System Verification	Services of CE & Quality System	6/6/2005	\$0
Lampire Biological Labs Inc.	Fixed Price Supply Agreement	Selling of Bovine Corium for Artefill	3/1/2006	\$0
Lampire Biological Labs Inc.	First Amendment to Fixed Price Supply Agreement	Agreement obligating buyer and seller to sell/buy 1,000 Kg of Bovine Corium	8/14/2007	\$0
Lemperle, Gottfried	Settlement Agreement	Confidential Settlement Agreement contained in Legal files	5/11/2006	\$0
Lemperle, Stefan	Settlement Agreement	Confidential Settlement Agreement contained in Legal files	11/17/2006	\$0
Lifecyte, Inc.	Bioanalytical Services Agreement	Lifecyte will act as an independent contractor to provide Bioanalytical services	8/28/2008	\$0
Manning, Salvage & Lee, Inc.	First Amendment to Consulting Agreement	Public Relation agency of record amended to as to scope of services/hours; Term; and Fees.	8/15/2008	\$0
Merit Medical Systems Inc.	Indemnification Agreement	Purchase syringe and cap components parts	5/9/2007	\$6,000
Nilson Corporate Solutions	Consulting Agreement	Provide information technology consulting assistance	10/22/2008	\$0
Pacific Rim Mechanical	Full Coverage Program (F.C.P.)	Provide Mechanical Services	7/1/2008	\$0
Pitney Bowes	EZ lease	lease of postage machine	2/8/2007	\$0

Preston Gates	Settlement Agreement	Settlement Agreement btwn BioForm & Martin Lempere	11/9/2005	\$0
Prudential Clean Room Services	Service Rental Agreement for	Monthly rental agreement for Scrubs & lab coats	8/1/2005	\$0
Ricoh	Equipment Lease	Agreement to lease copier equipment	1/17/2005	\$0
Ricoh	Equipment Lease	Agreement to lease copier equipment	7/5/2005	\$0
Ricoh	Equipment Lease	Agreement to lease copier equipment	6/5/2006	\$600
RPM Material Handling Co	Planned Maintenance Agreement	Provide Maintenance on 90 day cycle for Fork lift	7/16/2005	\$0
Russell Reynolds Associates	Letter Agreement	Search for CEO Candidate	6/4/2008	\$0
Salazar, Michael	Settlement Agreement	Confidential Settlement Agreement contained in Legal files	11/10/2006	\$0
Salesforce.com	Professional Services Agreement	Provide consulting for install of Salesforce.com	10/14/2005	\$16,000
Salesforce.com	Statement of Work Artes Medical - SOW002	Salesforce.com consulting and training	3/23/2006	\$0
Schreiber, Harald	Settlement Agreement and General Release		1/31/2007	\$0
Siemens Building Technologies	Service Agreement	Technical support program for the facility	9/2/2008	\$0
Sparkletts	Service Agreement	Water/Coffee Service Agreement	7/21/2005	\$0

Sterigenics	Processing Services Agreement	Agreement to provide Processing services	8/22/2005	\$0
Telepacific	Service Agreement	Provide internet T-1 and phone hubs	5/31/2006	\$0
Terminix	Commercial Pest Control Agreement	Pest Control	7/25/2005	\$0
	Protocol 521-01 Clinical Trial Agreement Amendment Two (2)	Protocol 521-01 (Cohen) Provides a change in the total Grant budget		
Therapeutics, Inc.		Protocol 521-01 (Moy) Post-approval study of the safety and efficacy of Artefill in subjects desiring correction of nasolabial folds	10/30/2007	\$0
Therapeutics, Inc.		Protocol 521-01 (Raab) Post-approval study of the safety and efficacy of Artefill in subjects desiring correction of nasolabial folds	2/7/2008	\$0
Therapeutics, Inc.		Protocol 521-01 (Clark) Post-approval study of the safety and efficacy of Artefill in subjects desiring correction of nasolabial folds	1/24/2008	\$0
Therapeutics, Inc.	Protocol 521-01 Clinical Trial Agreement	Protocol 521-01 (Rand) Post-approval study of the safety and efficacy of Artefill in subjects desiring correction of nasolabial folds	12/12/2007	\$0
Therapeutics, Inc.	Protocol 521-01 Clinical Trial Agreement	Protocol 521-01 (Rand) Post-approval study of the safety and efficacy of Artefill in subjects desiring correction of nasolabial folds	12/17/2007	\$0

Therapeutics, Inc.	Protocol 521-01 Clinical Trial Agreement	Protocol 521-01 (Brandt) Post approval study of the safety and efficacy of Artefill in subjects desiring correction of nasolabial folds	1/3/2008	\$0
Therapeutics, Inc.	Protocol 521-01 Clinical Trial Agreement	Protocol 521-01 (Narins) Post- approval study of the safety and efficacy of Artefill in subjects desiring correction of nasolabial folds	12/12/2007	\$0
Therapeutics, Inc.	Protocol 521-01 Clinical Trial Agreement	Protocol 521-01 (J Adelglass) Post-approval study of the safety and efficacy of Artefill in subjects desiring correction of nasolabial folds	12/27/2007	\$0
Therapeutics, Inc.	Protocol 521-01 Clinical Trial Agreement	Protocol 521-01 (Cohen) Post- approval study of the safety and efficacy of Artefill in subjects desiring correction of nasolabial folds	9/20/2007	\$0
Therapeutics, Inc.	Protocol 521-01 Clinical Trial Agreement	Protocol 521-01 (Monheit) Post-approval study of the safety and efficacy of Artefill in subjects desiring correction of nasolabial folds	4/23/2008	\$0
Therapeutics, Inc.	Protocol 521-01 Clinical Trial Agreement	Protocol 521-01 (Sadick) Post- approval study of the safety and efficacy of Artefill in subjects desiring correction of nasolabial folds	1/17/2008	\$0
Therapeutics, Inc.	Protocol 521-01 Clinical Trial Agreement	Protocol 521-01 (Schlessinger) Post-approval study of the safety and efficacy of Artefill in subjects desiring correction of nasolabial folds	11/2/2007	\$0

Therapeutics, Inc.	Protocol 521-01 Clinical Trial Agreement	Protocol 521-01 (Grimes) Post-approval study of the safety and efficacy of Artefill in subjects desiring correction of nasolabial folds	10/15/2007	\$0
Therapeutics, Inc.	Protocol 521-01 Clinical Trial Agreement	Protocol 521-01 (Peter P. Rullan) Post-approval study of the safety and efficacy of Artefill in subjects desiring correction of nasolabial folds	11/15/2007	\$0
Therapeutics, Inc.	Protocol 521-01 Clinical Trial Agreement	Protocol 521-01 (Michael H. Gold) Post-approval study of the safety and efficacy of Artefill in subjects desiring correction of nasolabial folds	10/25/2007	\$0
Therapeutics, Inc.	Protocol 521-01 Clinical Trial Agreement	Protocol 521-01 (Stacy R. Smith) Post-approval study of the safety and efficacy of Artefill in subjects desiring correction of nasolabial folds	11/24/2007	\$0
Therapeutics, Inc.	Protocol 521-01 Clinical Trial Agreement	Protocol 521-01 (Jeffrey Dover) Post-approval study of the safety and efficacy of Artefill in subjects desiring correction of nasolabial folds	10/15/2007	\$0
Therapeutics, Inc.	Protocol 521-01 Clinical Trial Agreement	Protocol 521-01 (Mark Rubin) Post-approval study of the safety and efficacy of Artefill in subjects desiring correction of nasolabial folds	1/3/2008	\$0
Therapeutics, Inc.	Amended and Restated Protocol 521-01 Clinical Trial Agreement	Protocol 521-01 (Ava Shamban) Post-approval study of the safety and efficacy of Artefill in subjects desiring correction of nasolabial folds	4/17/2008	\$0

Therapeutics, Inc.	Protocol 082-3051-401 Agreement for Grant Investigator Initiated Study	Protocol 082-3051-401 (Rullan) A Multi-Center Open-Label Study to Evaluate the Histologic Properties of PMMA Soft Tissue Based Implants in the Skin of Subjects Who have Previously Received Treatment with a PMMA Filler Material	2/18/2008	\$0
Therapeutics, Inc.	Protocol 082-3051-401 Agreement for Grant Investigator Initiated Study	Protocol 082-3051-401 (Cohen) A Multi-Center Open-Label Study to Evaluate the Histologic Properties of PMMA Soft Tissue Based Implants in the Skin of Subjects Who have Previously Received Treatment with a PMMA Filler Material	12/4/2007	\$0
Therapeutics, Inc.	Protocol 082-3051-405 Agreement for Grant Investigator Initiated Study	Protocol 082-3051-405 Correction of Atrophic Scars with Artefill (Dr. James. M. Spencer)	12/4/2007	\$0
Therapeutics, Inc.	Protocol 082-3051-409 Agreement for Grant Investigator Initiated Research	Protocol 082-3021-409 Effectiveness of Facial HIV Lipoatrophy Treated with Artefill (Chelsea Eye & Cosmetic Surgery Associates/Joseph A. Eviatar)	9/30/2008	\$0

Therapeutics, Inc.	Protocol 521-01 Clinical Trial Agreement	Protocol 521-01 (Werschler) Post-approval study of the safety and efficacy of Artefill in subjects desiring correction of nasolabial folds	11/13/2007	\$0
Therapeutics, Inc.	Protocol 521-01 Clinical Trial Agreement	Protocol 521-01 (Joseph) Post-approval study of the safety and efficacy of Artefill in subjects desiring correction of nasolabial folds	11/13/2007	\$0
Therapeutics, Inc.	Work Order #1	Clinical research services related to Protocol D82-3002-07	6/4/2007	\$0
Therapeutics, Inc.	Work Order Number Two (2)	Clinical research services related to Protocol D82-3001-07	6/4/2007	\$0
Therapeutics, Inc.	Protocol D82-3002-07 Clinical Trial Agreement	Protocol D82-3002-07 Regents of the University of California Irvine, (Christopher Zachary) Conduct a clinical trial to study the safety and efficacy of ArteFill in subjects desiring correction of nasolabial folds	6/30/2008	\$0
Therapeutics, Inc.	Protocol D82-3002-07 Clinical Trial Agreement	Protocol D82-3002-07 Saint Louis University, (Dee Anna Glaser) Conduct a clinical trial to study the safety and efficacy of ArteFill in subjects desiring correction of nasolabial folds	6/17/2008	\$0

Therapeutics, Inc.	Protocol D82-3002-07 Clinical Trial Agreement	Protocol D82-3002-07 Skin Care Research, Inc., (Marta Rendon) Conduct a clinical trial to study the safety and efficacy of ArteFill in subjects desiring correction of nasolabial folds	5/22/2008	\$0
Therapeutics, Inc.	Protocol D82-3002-07 Clinical Trial Agreement	Protocol D82-3002-07 University of Texas Southwestern Medical, (Jeffrey M. Kenkel). Conduct a clinical trial to study the safety and efficacy of ArteFill in subjects desiring correction of nasolabial folds	6/30/2008	\$0
Therapeutics, Inc.	Protocol D82-3001-07 Clinical Trial Agreement	Protocol D82-3001-07 (David C. Wilson, The Education and Research Foundation) Conduct a clinical trial to evaluate the incidence of positive skin reactions to ArteFill Skin Test	5/22/2008	\$0
Therapeutics, Inc.	Clinical Trial Agreement Amendment One (1)	Protocol D82-3001-07 (David C. Wilson, The Education and Research Foundation). Amends original CTA to provide for a change in the number of total study subjects, payment, number and types of patient follow-up activities	6/12/2008	\$0
Therapeutics, Inc.	Clinical Trial Agreement Amendment One (1)	Protocol 521-01 (Moy) Amends initial CTA by modifying the name of the institution	4/14/2008	\$0

Therapeutics, Inc.	Protocol 082-3051-403 Agreement for Grant Investigator Initiated Study	Protocol 082-3051-403 (Stacy Smith) A single center randomized evaluator blinded study to assess the safety and efficacy of Artefiller compared to Restylane and Radiesse in the Correction of Nasolabial Folds	10/19/2007	\$0
Therapeutics, Inc.	Protocol 521-01 Clinical Trial Agreement	Protocol 521-01 (Ava Shamban) Post-approval study of the safety and efficacy of Artefiller in subjects desiring correction of nasolabial folds	10/25/2007	\$0
Therapeutics, Inc.	Master Service Agreement	Managing the preclinical and clinical development of its new products in the field of dermatology	6/4/2007	\$0
Therapeutics, Inc.	Work Order #1	Clinical research services related to Protocol D82-3002-07	6/4/2007	\$0
Therapeutics, Inc.	Work Order #2	Clinical research services related to Protocol D82-3001-07	6/4/2007	\$0
Therapeutics, Inc.	Change Order One (to Work Order #1)	Change Order One revising budget from \$6,532,667 to \$7,981,762	1/1/2008	\$0
Therapeutics, Inc.	Change Order One (to Work Order #2)	Change Order One to Work Order Two (2) Project Budget revision	9/19/2008	\$0
Therapeutics, Inc.	Contractor Agreement	expert consultation on medical, technical, regulatory, clinical practice, product positioning and product marketing matters relative to Artes' technology	6/8/2006	\$0

Therapeutics, Inc.	First Amendment to Contractor Agreement	expert consultation on medical, technical, regulatory, clinical practice, product positioning and product marketing matters relative to Artes' technology	12/8/2006	\$0
Therapeutics, Inc.	Second Amendment to Contractor Agreement	expert consultation on medical, technical, regulatory, clinical practice, product positioning and product marketing matters relative to Artes' technology	6/8/2007	\$0
Therapeutics, Inc.	Third Amendment to Contractor Agreement	expert consultation on medical, technical, regulatory, clinical practice, product positioning and product marketing matters relative to Artes' technology	9/8/2008	\$0
Thrasher, Don	General Release and Settlement Agreement	Confidential Settlement Agreement contained in Legal files	9/12/2006	\$0
Veolia Environmental Services	Services Agreement	Provides Artes hazardous material and on-site services plan	3/3/2008	\$0
von Brendel	Settlement Agreement	Confidential Settlement Agreement contained in Legal files	1/9/2007	\$0